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10/058,226	01/29/2002	James Burnham	3691-278	3311

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EXAMINER

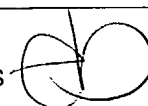
LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/058,226	Applicant(s) BURNHAM, JAMES 	
	Examiner Carlos Lopez	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claims 1-2, and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al (US 3,554,725) in view of Kozmin (US 3,847, 582). Bracken discloses a glass rolling method for making patterned glass. A glass-melting tank 16 provides molten glass ribbon to a patterned glass forming equipment 16, which comprises a nip formed by upper and lower forming rolls 66 and 70. As noted by Bracken, the upper forming roll 66 includes annular ridges 67 and valleys 68 adapted to form the desired pattern on the ribbon glass (Col. 5, lines 67-71). The glass ribbon is then capped, cut (Col. 5, lines 52-54). Bracken is silent disclosing a pattern comprising intersecting ridges of different lengths. However, as pointed out by Bracken, the disclosed glass making method is drawn to making both regular conventional plate glass and pattern glass of any desired pattern and thickness (Col. 1 lines 69-70). Thus, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use Bracken's method for providing a notoriously known glass pattern such as an antique glass pattern having intersecting ridges of varying lengths. Applicant's definition of an antique glass pattern includes intersecting ridges of varying length (the

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mere reference that its an antique glass (pattern) thus it would be obvious to a person of ordinary skill in the art to have provided a known pattern such as the claimed antique glass pattern if user so desired. Additionally, the term "pattern" as used by Bracken encompasses an "antique" glass pattern.

Claim 1 additionally recites providing a working temperature for the glass of about 1900-2400 Fahrenheit when it reaches the nip. As taught by Kozmin, the working temperature of the glass melt that is transferred to forming roll means 2 is at 2192 °F - 2372 °F (See Kozmin Bridging paragraph of Col. 3-4). Thus, absent any indication of the temperature of the glass that is being transferred to Bracken's forming rolls 66 and 70 (which corresponds to Kozmin's forming roll means 2), it would have been obvious to a person of ordinary skill in the art at the time the invention was made that Bracken's glass temperature prior to reaching the forming rolls would have a conventional temperature such as disclosed by Kozmin and claimed by applicant. The fact that Bracken is silent disclosing the temperature of the glass reaching the forming nip would motivated one of ordinary skill in the art to either provide routine experimentation to determine the optimum temperature of the glass to impart a pattern or optionally used the working conditions as known in the art which is shown by Kozmin to be as that claimed by applicant.

The claimed limitation of annealing is disclosed by Bracken at Col. 2, lines 55-60.

As for claim 1, the claimed intersect angles of the ridges would depend on the desired pattern of the glass plate.

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As for claims 5-6, the claimed height of the ridges would be obvious to a person of ordinary skill in the art in order to obtain the desired pattern.

2) Claims 1-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooke et al (US 3,914,118). Brooke discloses a glass rolling method for making patterned glass. A glass-melting tank 5 (hearth) provides molten glass ribbon to a nip formed by upper and lower forming rolls 4. As noted by Brooke, the upper forming roll 4 is provided with an indented pattern cut in its surface so as to form a corresponding pattern on the upper surface of the glass ribbon 2 (Col. 3, lines 40-43). The glass ribbon is annealed at zone 11 and then cut (Col.3, lines 55-56). Brooke is silent disclosing a pattern comprising intersecting ridges of different lengths. However, the type of glass pattern imparted on the glass plate would depend on the desired glass pattern, which includes well-known, old "antique" glass patterns. Thus, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use Brooke's method for providing a notoriously known glass pattern such an antique glass pattern having intersecting ridges of varying lengths. The mere naming of a glass pattern as "antique", Applicant provides an admission that a glass pattern having intersecting ridges of varying length and angles is known in the prior art. Hence, it would be obvious to a person of ordinary skill in the art to have provided, if desired, to impart known patterns such as the claimed antique glass pattern to Brooke's glass plate. Alternatively, the term "pattern" as used by Brooke would encompass an "antique" glass pattern.

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In regards to the claimed working temperature of 1900-2400 Fahrenheit, as noted above, absent any indication by Brooke, it is assumed that the working temperature has a conventional magnitude such as disclosed by Kozmin (see above) of 2192 °F - 2372 °F. Applicant is also directed to Grubb et al (US 3900329) col. 9 lines 40ff, showing that the glass melt at the feeder section of a glass furnace, the section of the furnace proximate to the lip of Kozmin, is at 2200 °F.

As for claim 3, the glass ribbon exits the nip at 1562°C.

As for claim 4, the water-cooled forming rolls 4 (See Col. 3, line 35) would be expected to be internally water cooled and the rolls at a temperature substantially lower than the glass ribbon in order to impart the pattern on the glass plate.

As for claims 5-6, the claimed height of the ridges would depend on the desired glass pattern.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3) Claims 1, 9 and 16 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No.

6,372,327. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 12 of U. S. Patent No. 6,372,327 discloses all the limitations of the instant claims 1, 9, and 16, except for the newly limitation of providing an "antique" glass pattern. The definition of antique glass pattern in the U. S. Patent No. 6,372,327 and that given in instant claims 1, 9 and 16 are the same, which is a plurality of intersecting ridges of different lengths defined in an exterior surface thereof (glass) wherein at least some of the ridges intersect one another at angles of from about 5-80 degrees. Thus U. S. Patent No. 6,372,327 glass pattern is considered "antique".

4) Claims 1,9, and 16 are directed to an invention not patentably distinct from claim 12 of commonly assigned U. S. Patent No. 6,372,327. Specifically, claim 12 discloses all the limitations of the instant claims 1, 9, and 16, except for the newly limitation of providing an "antique" glass pattern. However, the definition of a glass pattern in the U. S. Patent No. 6,372,327 is shared by the instant claims 1, 9 and 16, which is a plurality of intersecting ridges of different lengths defined in an exterior surface thereof (glass) wherein at least some of the ridges intersect one another at angles of from about 5-80 degrees. Thus U. S. Patent No. 6,372,327 pattern is considered "antique" due to having the same definition as of the U. S. Patent No. 6,372,327 imparted glass pattern.

Response to Arguments

Applicant's amendment to claim 16 obviates the 35 USC 103

(a) rejection made under Bracken.

Applicant's arguments filed 11/19/03 directed to the Bracken in view of Kozmin and the Brooke rejection have been fully considered but they are not persuasive.

Applicant argues that Kozmin is directed to a different glass that is used by Bracken because Bracken does not utilize crystallization and that thus one of ordinary skill in the art would not have equated Kozmin's temperature to Bracken. Said argument is unpersuasive, crystallization of Kozmin's glass is a post pattern treatment of the glass that is irrelevant and does not change the patterning step of Bracken. It is only a mere indication that one resultant pattern glass sheet product is crystallized and the other is not. Furthermore, applicant does not provide any evidence that would suggest Bracken does not use Kozmin's composition or that Bracken uses a particular glass composition. In view that Bracken does not disclose any particular glass composition one of ordinary skill in the art would thus reason that Bracken's method be capable of being used with any glass composition known in the art (i.e. Kozmin's composition) at the time Bracken's invention was made.

Applicant also argues that the temperature range 2192 °F - 2372 °F is the temperature of the glass at the time it is degassed. Applicant alleges that a glass having a temperature of 2192 °F - 2372 °F would then fall over from a lip, into a pool, over a cooled roller and that only after the glass is cooled in the pool the glass reaches the nip, at which time the glass is at a temperature less than 2192 °F - 2372 °F. It is

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first noted that Kozmin and Brooke does not disclose cooling of the glass in the pool as alleged by applicant. Furthermore, in order for the temperature of the glass to not read on applicants claim, said glass would have to be dramatically cooled from 2372 °F to less than 1900 °F in the transition period from the lip to the nip of Kozmin or Brooke, a change of temperature of more than 472 °F. Said temperature change can't be reasonably deducted to take place as alleged by applicant in view that the time required for the glass to reach the nip is very short as shown by the proximity of the lip to the nip (See Brooke and Kozmin's figure 1). Furthermore, applicant merely alleges that the temperature of the glass would be less than 1900 °C without providing any evidence or plausible reasoning for the argued assertion.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference A in PTO-892 has been cited to show the state of the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CL


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